

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE MERRILL, BOFA, AND MORGAN
STANLEY SPOOFING LITIGATION

Master Docket No. 19-cv-6002 (AJN)

ORAL ARGUMENT REQUESTED

THIS DOCUMENT RELATES TO: ALL
ACTIONS

**NOTICE OF MOTION TO DISMISS BY
DEFENDANTS JOHN PACILIO AND EDWARD BASES**

PLEASE TAKE NOTICE that upon (i) the accompanying Memorandum of Law, and (ii) the Bank Defendants' Joint Memorandum of Law in Support of their Motion to Dismiss the Consolidated Class Action Complaint, filed contemporaneously herewith, Defendants John Pacilio and Edward Bases (the "Individual Defendants"), by their undersigned counsel, will respectfully move this Court, before the Honorable Judge Alison Nathan, United States District Judge, Southern District of New York, for an order pursuant to Federal Rule of Civil Procedure 12(b)(6) dismissing Plaintiffs' Consolidated Class Action Complaint (ECF 27), on the following grounds:

- (1) Plaintiffs' claims under the Commodity Exchange Act ("CEA") and for unjust enrichment are barred by the applicable statute of limitations;
- (2) The CEA does not provide a private right of action to pursue alleged "spoofing" violations, and Plaintiffs' claims are based on spoofing, not manipulation;
- (3) Plaintiffs fail to allege that they suffered actual damages;
- (4) Plaintiffs fail to plead CEA manipulative device claims for conduct that occurred before August 15, 2011 because the relevant statute and rule were not in effect before that time;

- (5) Plaintiffs fail to state a claim for unjust enrichment;
- (6) Plaintiffs fail to state a claim against the Individual Defendants for market manipulation;
- (7) Plaintiffs fail to state a claim against the Individual Defendants for manipulative device; and
- (8) Plaintiffs fail to state a claim against the Individual Defendants for principal/agent liability.

The support for grounds (1) through (5) above are set forth in the Bank Defendants' Joint Memorandum of Law in Support of their Motion to Dismiss the Consolidated Class Action Complaint, filed at ECF 34, and the support for grounds (6) through (8) above are set forth in the Individual Defendants' accompanying Memorandum of Law in support of their motion to dismiss.

PLEASE TAKE FURTHER NOTICE THAT pursuant to the so-ordered stipulation entered into by the parties, dated September 13, 2019, ECF 15, Plaintiffs shall serve any paper in opposition on or before March 13, 2020, and Defendants shall serve any reply no later than April 13, 2020.

Dated: January 13, 2020

By: /s/ David H. McGill

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